STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from Court of Appeals

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES ("AFSCME") MICHIGAN COUNCIL 25 AND ITS AFFILIATED AFSCME LOCALS 23 AND 2394,

Docket No.: 122053

Plaintiffs/Appellants,

And

CITY COUNCIL FOR THE CITY OF DETROIT, et al.,

Intervening Plaintiffs/Appellants.

-v-

CITY OF DETROIT AND THE DETROIT HOUSING COMMISSION,

Defendants/Appellees.

INTERVENING PLAINTIFF/APPELLANTS' APPEAL BRIEF

ORAL ARGUMENT REQUESTED

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STATEMENT OF BASIS FOR JURISDICTION

Intervening Plaintiffs/Appellants Detroit City Council, appeal from the July 23, 2002 Judgment of the Court of Appeals. On November 19, 2002 this Court granted intervening Plaintiffs/Appellants' Application for Leave to Appeal.

The issues involved in the instant appeal concern the validity of local legislation, passed in light of existing state legislation. The parties in interest include the City of Detroit, the largest municipal political subdivision of the state, as well as its legislative body, the Detroit City Council. The Court of Appeals' decision in this matter is clearly erroneous, in that the Court based its decision upon facts not supported by the record. Further, the Court of Appeals' decision in this matter is inconsistent with a prior decision by the Court of Appeals.

The instant Appeal is within this Court's appellate jurisdiction as set forth in MCR 7.302(B)(1)(2)(3)(5).

STATEMENT OF QUESTIONS PRESENTED

1. WHETHER THE COURT OF APPEALS COMMITTED ERROR IN HOLDING THAT THE1996 AMENDMENTS TO THE MICHIGAN HOUSING FACILITIES ACT, MCLA § 125.651 *ET. SEQ.* SEVERED THE CITY OF DETROIT'S EMPLOYMENT RELATIONSHIP WITH PERSONS EMPLOYED AT THE DETROIT HOUSING COMMISSION AS A MATTER OF LAW, GIVEN THE SPECIFIC WORDING OF MCLA § 125.665(3), READ IN CONJUNCTION WITH THE BALANCE OF THE STATE ACT AS AMENDED AND THE CHARTER AND CITY CODE OF DETROIT?

   Plaintiffs/Appellants Answer: "Yes"

   Intervening Plaintiffs/Appellants Answer: "Yes"

   Court of Appeals Answered: "No"

2. WHETHER THE COURT OF APPEALS' OPINION HOLDING THAT DETROIT CITY CODE §§ 14-5-3(5)-(7) ARE INVALID AND PREEMPTED BY THE HOUSING FACILITIES ACT IS ERRONEOUS, GIVEN THE PLAIN MEANING OF THE LANGUAGE OF THE ACT, AND GIVEN THE ACTIONS OF THE DETROIT HOUSING COMMISSION, THE MAYOR AND THE DETROIT CITY COUNCIL PRIOR TO AND SUBSEQUENT TO THE AMENDING OF THE HOUSING FACILITIES ACT IN 1996, WHEREIN SAID PARTIES, THROUGH THEIR CONDUCT, HAVE EXPRESSLY AND IMPLICITLY AGREED THAT EMPLOYEES OF THE DETROIT HOUSING COMMISSION ARE TO REMAIN WITHIN THE CITY OF DETROIT'S SYSTEM UNTIL MUTUAL AGREEMENT IS REACHED BETWEEN THE RESPECTIVE PARTIES TO SEVER THAT STATUS?

   Plaintiffs/Appellants Answer: "Yes"

   Intervening Plaintiffs/Appellants Answer: "Yes"

   Court of Appeals Answered: "No"

STATEMENT OF RELEVANT FACTS

Detroit City Council, Intervening Plaintiffs/Appellants, submit that the concise statement of facts and material proceedings below, submitted by Plaintiffs/Appellants, AFSCME Council 25, are accurate. The City Council incorporates AFSCME Council 25's statement of facts by reference herein. In addition thereto, the following relevant facts should be considered in evaluating the substantive issues raised in **this** Appeal.

The Detroit Housing Commission was initially established as the Detroit Housing Department in 1933, pursuant to Public Act 18, the "Housing Facilities Act", as a department of the City of Detroit's executive branch of city government. The Detroit Housing Department was changed to the Detroit Housing Commission by way of resolution which was proposed by the Mayor, and approved by the Detroit City Council on March 15, 1996.(**237A-250A**).[1] In spite of the 1996 change from "department" to "commission", from 1933, through the present date, employees of the DHD and/or DHC have been employees of the City of Detroit, entitled to all rights and benefits of city employment and subject to the city's wage system and civil service classification system[2] Pursuant to the City Charter, absent a specific exception defined by the Charter, all city employees are to be included within the civil service system of the City of Detroit, see § 6-517 of the Detroit City Charter.[3]

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[1] See Intervening Plaintiffs/Appellees Joint Appendix, hereinafter "**237A.**"

[2] A large percentage of DHC employees are subject to collective bargaining agreements between the City of Detroit and their representatives.

[3] Section 6-517 of the Charter provides: " The classified service of the City shall consist of all employment in the city services except: 1) Elected officers; 2) Persons holding appointments under this Charter; 3) Persons employed to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the City; and 4) Others excepted by this Charter. (See Charter, **396A**).

In 1996, the State of Michigan legislature amended the Housing Facilities Act and, in so doing, indicated that a local housing commission was a "public body corporate" with certain inherent powers and duties. The inherent powers and duties of a local housing commission were contained within MCLA §125.654(5)(a-e) and §125.657. These sections provides in pertinent part:

> (5) "The commission shall be a public body corporate. Except as otherwise provided in this Act, the commission may do all of the following: (a) Sue and be sued in any court of this state. (b) Form or incorporate non-profit corporations under the laws of this state for any purpose not inconsistent with the purposes for which the commission was formed. (c) Serve as a shareholder or member of a qualified non-profit corporation organized under the laws of this state. (d) Authorize, approve, execute and file with the Michigan Department of Commerce, those documents that are appropriate to form one or more non-profit corporations. (e) Form or incorporate for profit corporations, partnerships and companies under the laws of this state for any purpose not inconsistent with the purposes for which the commission was formed."(§125.654(5)(a)(e),
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> • • •
>
> Such commissions shall have the following enumerated powers and duties:
>
> (a) To determine in what areas of the city or village it is necessary to provide sanitary housing facilities for families of low income and for the elimination of housing conditions which are detrimental to the public peace, health, safety, morals and /or welfare;
>
> (b) To purchase, lease, sell, exchange, transfer, assign and mortgage any property, real or personal, or any interest therein or acquire the same by gift, bequest or under the power to eminent domain; to own, hold, clear and improve property; to engage in or to contract for the design and construction, reconstruction, alteration, improvement, extension, and /or repair of any housing project or projects or parts thereof; to lease and/or operate any housing project or projects;
>
> (c) To control and supervise all parks and playgrounds forming a part of such housing development but may

contract with existing departments of the city or village for operation or maintenance of either or both;

(d) To establish and revise rents of any housing project or projects, but shall rent all property for such sums as will make them self-supporting, including all charges for maintenance and operation , for principal and interest on loans and bonds, and for taxes;

(e) To call only such tenants as are unable to pay for more expensive housing accommodations;

(f) To call upon other departments for assistance in the performance of its duties, but said departments shall be reimbursed for any added expense incurred therefor;

(g) Shall have such other powers relating to said housing facilities project as may be prescribed by ordinance or resolution of the governing body of the city or village or as may be necessary to carry out the purposes of the Act. (MCL §125.657).

The amendatory legislation also gave local legislative bodies the power to give local housing commissions greater power and authority in other areas of their activities. The other areas include the power to enter into real property transactions as the party in interest, MCLA §125.661(1);[4] the power to borrow money and/or issue its own revenue bonds, MCLA §125.666 through §125.669; and the power to seek and solicit grants, MCLA §125.659. However, local legislative approval is required before a local housing commission can exercise any of these powers independently.

The Housing Facilities Act as amended also retained the municipality's legislative body's oversight role. A local housing commission is under a duty to provide an annual report to the

[4] Excluding contracts or leases with tenants or facility managers which must be executed by and in the name of the DHC.

municipality's governing body, summarizing its annual activities. The amendatory act also provides that a local housing commission may be required to file other reports as the governing body from time to time may require. MCLA §125.659. At no point in the enabling amendatory legislation does the legislation provide that a local housing commission, as a result of the powers granted to it, is free to act as an entity totally separate and distinct from the City or the City Council with respect to any and all matters, as Defendants, throughout this litigation have suggested has magically occurred as a result of the use of the term "public body corporate."

In summary, although the 1996 amendment to the Housing Facilities Act provided a mechanism for providing a local housing commission with a greater degree of autonomy, the Act is structured in such a way that the most significant autonomous powers must be approved by ordinance by the city's governing body before they can be exercised. Further, even upon such a grant of autonomy, the city and specifically the city's legislative body, continues to maintain a significant degree of supervisory control.

Immediately prior to the passage of the 1996 amendment to the Act, the Mayor proposed a resolution to the Council which asked the City Council to: 1) amend the Executive Organization Plan, transferring public housing functions to a housing commission; and 2) provide the DHC with additional autonomous authority in the areas of management information systems, finance, budget, purchasing and human resources. In conjunction with that submission, the Mayor expressly noted, "this Resolution shall not be construed as changing or altering the status of City employees at Detroit Housing Department/DHC with respect to the rights and benefits granted to such employees by civil service or collective bargaining agreements. (**237A-250A**). On March 15, 1996, the City Council passed said resolution.

Subsequent to the effective date of the amended Housing Act, in the fall of 1996, the Mayor and the DHC sought and obtained the City Council's approval of a revised Memorandum of Agreement with HUD. The revised Memorandum of Agreement, signed by the Mayor and HUD on October 14, 1996, did not disturb the City's relationship with DHC employees. The Memorandum of Agreement acknowledged that the City would need City Council approval to expand the DHC's power. (**252A, 258A**). From the date of that Memorandum of Agreement, through July 17, 2001, although there were discussions, and various documents exchanged between the Mayor's office and the City of Detroit, the City Council refused to grant the DHC any powers above and beyond those specifically granted by the amendments to the Act. Consistent with the Memoranda of Agreement posed by the Mayor and adopted by the City Council in 1996, all parties to this litigation maintained the *status quo*, to wit, employees of the DHC were, and remained, employees of the City of Detroit.

For the budget years 1996-97 through 2001-02, the Mayor and the Budget Director on behalf of the City of Detroit's administration and on behalf of the DHC voluntarily submitted, as part of the Mayor's proposed budget, **compensation ranges and classifications** for DHC employees for approval by the City Council and for use by the DHC in fixing the compensation of its officers and employees. In addition, the Detroit City budget for those years has always included appropriated funds for DHC employees, based upon **compensation ranges and classifications submitted** to the Detroit City Council as part of the budget submission process. The actual compensation ranges and classification ranges are contained within a document known as the City's *White Book*. For the budget years indicated, the specific compensation ranges and classifications for all employees of the DHC have been included in the City's *White Book*. (See Affidavit of Kathie Dones-Carson, and

pages from the 2001-2002 budget and *White Book* originally attached to Intervening Plaintiffs' Brief in Support of Motion for Summary Declaratory Judgment. (**215A-235A**).[5]

It is crucial to note that the Charter mandates that all compensation paid to City employees be approved by the City Council, either through the approval of collective bargaining agreements or pay plans. Detroit City Charter §§2-108 and 6-508.[6] As part of the submission for the 2002-2003 budget year, the City of Detroit administration and the DHC initially refused to provide the City Council with budget figures for the DHC and compensation rates and classifications for DHC employees. The failure was rectified through dialogue between respective counsel. As a result of that dialogue, the DHC did provide the City Council with supporting documentation relative to the DHC and the DHC revenues and expenditures were included in the 2002-03 budget. Additionally, the wages, compensation levels and classifications for DHC employees were also incorporated by the Council in the *White Book* and, accordingly, within the budget, by the City Council as part of the budget adoption process.

The aforementioned description of the budget adoption process was presented to the Court

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[5] In the *White Book*, DHC employees are identified by a "55" prefix in the class code. For example, on page 1 of the *White Book* see e.g., "55-13-01 Accountant I Public Housing." (**229A**).

CLASS	TITLE	CODE	OLD		INCREASE		NEW	
			MIN	MAX	MIN	MAX	MIN	MAX
55-13-01	ACCOUNTANT I - PUBLIC HOUSING	A	26700	37100			26700	37100

[6] Section 2-108 provides in pertinent part: "All persons, except elective officers and those whose compensation is stated in collective bargaining contracts . . . employed by the City and paid either in part or in whole from the City's appropriations shall be compensated in accordance with pay plans which have been approved by ordinance. Section 6-508 provides in pertinent part: "The City Council must ratify any collective bargaining contract before it becomes effective." (**376A, 394A**).

of Appeals in depth by both Plaintiffs in their respective briefs. In spite of this presentation, the Court of Appeals failed to take note of said fact, and premised their opinion upon an understanding that the Mayor's only "recommendation" to the City Council to fix the compensation of DHC employees, was "a lump sum budget for the DHC." Per the Court of Appeals, the Mayor's "lump sum budget for the DHC [was] inadequate to trigger the clear language and plain intent of MCLA § 125.655(3)." (**38A**). This factual oversight on the part of the Court of Appeals, alone, cuts to the heart of the Court of Appeals decision, and is fatal to that Court's analysis.

On July 17, 2001, shortly after the completion of the budget adoption process for the fiscal year July 1, 2001, through June 30, 2002 the Mayor, on behalf of the City's executive branch of government, corresponded with the Detroit City Council and announced that, effective Friday, September 21, 2001, the DHC would begin operating as a separate and distinct corporate body politic.(**339A**). As part of that separation, employees of the DHC would cease to be employed by the City of Detroit, and would become DHC employees. In addition, the Mayor in recognizing the need for City Council approval, submitted a proposed ordinance to the City Council amending the Executive Organization Plan, and amending the City Code, so as to afford the DHC its own attorney, and so as to grant the DHC the power to employ its own employees separate from the City of Detroit's employment system.(*Id.*). In response to that proposed action, the Detroit City Council refused to pass that ordinance and passed a series of ordinances and resolutions, which defined and delineated the respective powers of the Detroit City Council, the City's executive branch and the DHC in a manner which the Council believed was consistent with the Detroit City Charter, the existing City of Detroit Code, state law, including the Housing Facilities Act, Article 7 § 24 of the

Michigan Constitution, and past practices.[7] Each of the ordinances and resolutions passed by the Council were vetoed by the Mayor and were subsequently overridden by unanimous vote of the Council.[8]

The Court of Appeals rejected the City Council's position and held the following provisions of the Detroit Housing Code to be inconsistent with the following provisions of the Housing Facilities Act and, therefore, declared these provisions of the Detroit City Code to be valid [9]:

DETROIT CITY CODE §14-5 - 3 (4)-(7)	**MCLA §125.655(3)**
"...(4) A president and vice president and other officers designated by the Commission shall be elected by the Commission. The Commission may employ and fix the compensation of the director, who may also serve as secretary and other employees as necessary. (5) ***The mayor shall recommend to the City Council either a compensation schedule or compensation ranges and classifications for the Commission officers and employees. (6) The City Council shall adopt a resolution either conditioning the establishment of any compensation of an officer or employee of a Commission upon the approval of the City Council or establishing***	"A president and vice president and other officers designated by the Commission shall be elected by the Commission. The Commission may employ and fix the compensation of a director who may serve as secretary, and other employees a necessary. ***Upon the recommendation of the appointing authority, the governing body of the incorporating unit may adopt a resolution either conditioning the establishment of any compensation of an officer or employee of the Commission based upon the approval the governing body, or establishing compensation ranges and classifications to be used by a Commission in***

[7] The ordinances and resolutions amended and supplemented the preexisting ordinances within the Detroit City Council Code which had established and empowered the DHC. The preexisting sections were entitled "Article V. Housing Commission" and included code sections 14-5-2 through 14-4-20. (A copy of the ordinance as it existed prior to the amendments is found at **321A** and are found at **340A-350A**).

[8] The amendatory ordinances are also included in and are found at **340A-350A**. The Council's explanatory resolutions are found at **351A-366A**.

[9] Several other provisions of the Detroit City Code were also struck down, specifically, Detroit City Code §§ 14-5-3(2) and 14-5-7(1). Additionally, § 14-5-7(1) was upheld as a legitimate exercise of legislative authority. (See Court of Appeals Opinion, **40A-43A**). Intervening Plaintiffs/Appellants do not take issue with these rulings of the Court of Appeals at this time.

compensation ranges and classifications to be used by the Commission in fixing the compensation of its officers and employees. (7) All DHC employees shall be members of either the classified service or the unclassified service as is provided under §6-517 of the Charter of the City of Detroit, and shall be entitled to all rights of all employees of the City of Detroit, including, but not limited to pensions and benefits...

fixing the compensation of it officers and employees. The Commission shall prescribe the duties of it officers and employees and shall transfer to its officers and director those functions and that authority which the Commission has prescribed.

* It is crucial to note that the predecessor provision §125.755(3) also contains the language "The commission shall prescribe the duties of its officers and employees . . ." The 1996 amendment offered no change in this regard.

It is significant to note, that Detroit City Code §§ 14-5-3(5)-(7) were in fact enacted in light of the existing state of the law at that time, to wit, in light of the fact that the mayor had in fact previously submitted recommendations to the City Council, establishing compensation ranges and classifications to be used by the Housing Commission in fixing the compensation of its officers and employees. Thus, the legitimacy of the Council's legislative action in passing those sections of the Detroit City Code must be viewed in light of the existing state of affairs.

STATEMENT OF PROCEEDINGS BELOW.

The Detroit City Council submits that the statement of material proceedings below presented by AFSCME Council 25 in their Brief is accurate and is incorporated by reference herein. In addition thereto, Intervening Plaintiffs/Appellants submit the following.

A. INTERVENING PLAINTIFFS/APPELLANTS COMPLAINT.

In addition to injunctive relief, in the City Council's First Amended Complaint, the City Council asked the lower court to determine, by way of Declaratory Judgment, that all of the legislation of the City Council, specifically Detroit City Code §§ 14-5-3(5)-(7), constituted a valid

use of legislative authority by the City Council. (See Intervening Plaintiffs/Appellants' First Amended Complaint for Declaratory Judgment and Other Equitable Relief, p.7, ¶ 30 and p.8, Request for Relief **156A-198A**).

B. THE TRIAL COURT'S JANUARY 25, 2002 DECLARATORY ORDER.

Note well that the Trial Court, in entering its Interim Injunctive Order on January 25, 2002, that barred the city from severing its employment relationship with employees assigned to the DHC through June 30, 2002 based its ruling in part, upon a recognition that regardless of whether the 1996 amendments to the Housing Act severed the employment relationship of employees of the DHC from the City of Detroit's employment system as a matter of law, the DHC and the city's administration, through the actions of the mayor and the budget director, had voluntarily maintained the employment relationship with the city as specifically allowed by the act, specifically MCLA § 125.655(3). The mayor and the budget director did this by submitting proposed wage and classification schemes to the City Council for their approval, for the fiscal years 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01, 2001-02. Therefore, according to the Court, at the time that Order was entered, there was an existing employment relationship between DHC employees and the City of Detroit's employment system. (Hearing transcript, November 15, 2001, **48A-50A**, and Order dated January 25, 2002, **16A**).

C. THE COUNT II SUMMARY DISPOSITION CROSS MOTIONS AND MAY 25, 2002 ORDER.

The Trial Court, in ruling from the bench on April 10, 2002, made the following critical

observations:

- "[t]he term public body seems to have in effect no magical meaning in and of itself. In the cases cited by the Defendants, namely, the *Housing Authority of Los Angeles* at 243 P2d 512 and *Tumulte v Jersey City* at 155 A2d 148, the courts recognize that although under a statute a local housing authority is a separate, independent entity but derives only those powers granted in the enabling legislation." (April 10, 2002 Hearing Transcript **114A**).

- In determining that the amendment to the Housing Act did not create a mandatory, but rather a permissive act in many respects, the Trial Court cited to the legislative history of the Amendment and stated: "And at page 3 there was the -- a note that analyzed this legislation. And the note -- the -- the summary notes the changes by the Amendment and notes the -- and states, that the expanded powers will require approval at the local level. The bill in that sense is permissive. So, even by legislative analysis of that legislation, [as] [sic] submitted by the defense in their exhibits suggests that this is a permissive statute as opposed to mandatory."(*Id.* **117A**).

- The Trial Court also noted that even if the Amendment to the Housing Act did in fact sever the employment relationship of Detroit Housing Commission employees from the City's employment system, the actions of the Detroit Housing Commission, the City of Detroit administration, specifically, the Mayor, and the Detroit City Council,

in a series of Memorandums of Agreement, entered into both before and after the 1996 Amendment to the Act, and by way of a resolution passed by the Detroit City Council subsequent to the passage of the Act on or about September 19, 1996, had agreed to exercise their permissive right to maintain City control over City Housing Commission employees. (**119A-120A**).

- The Trial Court also noted in determining that Detroit Code §14-5-3(5) and (6) were not preempted, that said Code sections which called for mandatory submission and passage of job classifications and pay schemes, as part of the yearly budget process, were valid and not preempted in light of the fact that the respective parties had previously agreed through the Memorandums of Agreement and Prior Resolutions, that Detroit Housing Commission employees would, in fact, remain as City of Detroit employees. It was important to note that the Trial Court was not examining the validity of those provisions in a vacuum, but rather under the existing state of affairs. *Id.* at 13-15.(**121A-123A**).

D. APPEAL.

Following the ruling of the Trial Court, Defendants filed a Claim of Appeal in the Court of Appeals and, additionally, filed a Motion for Immediate Consideration. The need for expedited review was allegedly premised upon the fact that the City of Detroit's new fiscal year runs from July 1, 2002 through June 30, 2003. Per Defendants, it was somehow necessary to determine the validity of the City Council's Ordinances and to resolve the issue as to the employment status of DHC employees **prior to the beginning of the city's fiscal year**. Intervening Plaintiffs/Appellants,

Detroit City Council, responded to the effect that there was no urgent need to rush to judgment and resolve the Appeal on an expedited basis, given the fact that DHC employees had in fact been City of Detroit employees since the1996 amendment to the Act. However, the Court of Appeals granted Defendants' Motion for Immediate Consideration and heard the matter on an expedited basis. In spite of the fact that emergency consideration was given to the Appeal in order to have the matter resolved prior to the start of the city's fiscal year, the Court of Appeals did not, in fact, deliver their expedited opinion until July 23, 2002, 23 days after the start of the city's fiscal year.

In its opinion, the Court of Appeals determined that the 1996 Amendment to the Housing Act, severed the city's employment relationship with DHC employees by operation of law, and that, accordingly, §§14-5-3(5)-(7) of the Detroit City Code, were invalid. Further, the Court concluded that the permissive involvement of the City Council in establishing compensation ranges allowed by MCLA §125.655(3) had not occurred. In reaching its determination, the Court of Appeals relied upon an inaccurate factual assumption, to wit, that compensation ranges and classifications for DHC employees **had not** been submitted as part of the budget process since 1996 and that the only "recommendation" ever submitted to the City Council for approval by the mayor was, in fact, "a lump sum budget for the DHC", which contained no breakdown as to the monies allocated for DHC employees, nor contained anything regarding their compensation ranges or classifications.(**38A**). This factual assumption is inaccurate in that, as noted in the Statement of Facts, since 1996 the mayor has submitted recommended compensation ranges and classifications for all DHC employees as part of the budget adoption process. In that this inaccurate factual assumption is the cornerstone of the Court of Appeals' decision, this factual error made by the Court of Appeals is fatal to its opinion and, accordingly, the opinion of the Court should be disregarded and overturned.

LAW AND ARGUMENT

I. THE COURT OF APPEALS COMMITTED ERROR IN HOLDING THAT THE 1996 AMENDMENTS TO THE MICHIGAN HOUSING FACILITIES ACT, MCLA §125.651 *ET. SEQ.*, SEVERED THE CITY OF DETROIT'S EMPLOYMENT RELATIONSHIP WITH PERSONS EMPLOYED AT THE DETROIT HOUSING COMMISSION, GIVEN THE SPECIFIC WORDING OF MCLA §125.655(3), READ IN CONJUNCTION WITH THE BALANCE OF THE STATE HOUSING ACT AS AMENDED.

A. STANDARD OF REVIEW

This instant issue is one of statutory interpretation. This is an issue of law. Accordingly, the standard of review is *de novo*. *Putkamer V Transamerica Ins. Corp. Of America*, 454 Mich 626 (1997).

B. APPLICABLE RULES OF STATUTORY CONSTRUCTION.

Recognized rules of statutory construction apply with equal force to statutes as well as municipal legislation. *Fink v City of Detroit*, 124 Mich App 44, 49 (1983). In interpreting the meaning of a statute, it is fundamental that the Court should attempt, whenever possible, to interpret a statute so that, if possible, all provisions within the statute have effect, without repugnancy or inconsistency, so as to render the statute a consistent and harmonious whole. See e.g., *Oxford Township v Michigan Department of Social Services*, 120 Mich App 103, 108 (1982); *Irvan v Borman's, Inc.*, 96 Mich App 232, 246, rev'd on other grounds, 412 Mich 496 (1982). In addition, and of crucial import in the instant case, a statute should not only be construed harmoniously within itself, but also in a manner so as to be in harmony and not conflict with other existing legislation. In construing several pieces of legislation, the Court should, if possible, reconcile them instead of

striking down any particular statute. *Artman v College Heights Mobile Park, Inc.*, 20 Mich App 193, 197 (1969); *Manville v Bd of Governors of Wayne State University*, 85 Mich App 628, 635 (1978).

It is fundamental that municipal ordinances are presumptively valid. *City of Detroit v Qualls*, 434 Mich 340, 364 (1990). When an ordinance is enacted in the interest of the public health, safety and welfare, it is presumed to be valid and may only be declared invalid if it plainly appears that the ordinance does not tend to any applicable degree to promote those ends, and that the power to legislate has been exercised arbitrarily. *Square Lake Hills Condominium Association v Bloomfield Township*, 437 Mich 310; *reh denied* 437 Mich 1280 (1991).

Under Article 7 § 22 of the Constitution of 1963, Detroit City Council has the power to adopt resolutions and ordinances relating to its municipal concerns. A state statute does in fact take precedence over a municipal ordinance, and the municipal ordinance becomes void upon the enactment of a conflicting state statute, or is void *ab initio* if the statute exists prior to the passage of the ordinance. See e.g., *Michigan Restaurant Association v City of Marquette*, 245 Mich App 63 at 66 (2001); and *People v Llewellyn*, 401 Mich 314, 322 N.4(1977). However, a municipal ordinance is only invalid if it is in direct conflict with the state statute. Direct conflict exists when an ordinance permits what a statute prohibits or the ordinance prohibits what the statute permits. *Township of Cascade v Cascade Resource Recovery, Inc*, 118 Mich App 580, 585 (1982), appeal held in abeyance 422 Mich 882 (1985); See also *People v Darvall*, 82 Mich App 652 (1978). Consistent therewith, this Court has held:

> "[The] fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith unless the statute limits the requirement for all cases to its own prescription ... Unless legislative provisions are contradictory in the sense that they cannot co-exist, they are not deemed inconsistent

because of mere lack of uniformity in detail."

Rental Property v Grand Rapids, 455 Mich 246, 262 (1997), and sources cited therein at page 261. Accordingly, absent a direct conflict, Detroit City Code §§ 14-5-3(5)-(7) must be allowed to stand.

C. APPLYING RECOGNIZED RULES OF STATUTORY CONSTRUCTION AND RECOGNIZING EXISTING CASE LAW, §§14-5-3(5) THROUGH 14-5-3(7) OF THE DETROIT CITY CODE ARE VALID AND ARE NOT PREEMPTED BY §125.655(3) OF THE HOUSING FACILITIES ACT, AS AMENDED.

The Court of Appeals opined that §§14-5-3(5-7) of the Detroit City Code were in direct conflict with MCLA §125.655(3). This assertion is incorrect. First, the plain meaning of the wording of § 125.655(3)suggests that under the state statute the Mayor does have an affirmative duty to make recommendations to the City Council. MCLA §125.655(3) provides in relevant part:

> "Upon the recommendation of the appointing authority, the governing body of an incorporating unit may adopt a resolution either conditioning the establishing the compensation of an officer or employee of the commission upon the approval of the governing body or upon approval of the compensation ranges and classifications to be used by a commission in the compensation of its officers and employees." (Emphasis added).

The discretion given in the statute as written is the discretion given to the governing body, i.e., the Council, as between adopting either a requirement requiring that the compensation of each officer or employee be approved or establishing compensation ranges and classifications. While the Council may choose either one of those two alternatives, the Council must in fact act. The directive nature of the use of the term "may" in this context is consistent with the recognized principle that "Statutes which confer upon a public body or officer, power to act for the sake of justice, or which

clothe a public body or officer with the power to perform acts which concern the public interest are regarded as imposing mandatory duties upon the public body or officer, even though the language used may traditionally be thought of as permissive, such as "may."" See e.g., *Smith v City Commission of Grand Rapids*, 281 Mich 235 (1937); *Kment v City of Detroit*, 109 Mich App 48 (1981); *Fink v Detroit*, 124 Mich App 44, 49 (1983).

It follows that if in fact the use of the term "may" in MCLA §125.655 (3) confers an affirmative duty on the City Council to adopt one of two alternatives, it is also incumbent upon the appointing authority to make the appropriate recommendations so as to afford the Council the opportunity to act. The City Council, in passing its ordinance, chose to recognize and emphasize the mandatory nature of the process through its use of the word "shall" in §14-5-3(5-6).
The plain meaning of the phrase "upon the recommendation of the mayor" is that the ultimate compensation plan or schedule approved must be a plan or schedule devised and recommended by the mayor. The mayor has the discretion as to what is recommended, not whether to make a recommendation.

The City ordinances as amended are also consistent with the prior relevant ruling of the Court of Appeals. In *Grand Rapid Employees Independent Union v City of Grand Rapids*, 235 Mich App 398(1999), the Court of Appeals noted that in order for a housing commission to be able to have the sole authority to fix the compensation and fringe benefits of its own employees, and in essence, to employ its employees outside the municipality's employment system, legislative action was required. The Court noted that independent employment status could only occur "... in the absence of a city resolution to the contrary." *GREIU v Grand Rapids, supra* at 405. Focusing on the Grand Rapids' ordinance at issue, which had in fact given the sole authority to fix compensation fringe benefits to

the housing commission, the Court noted:

> "Under the facts presented herein, we find that in light of the current version of MCLA §125.655(3); MSA 5.301(3); and the Grand Rapids ordinance granting the power to the housing commission to set the terms and conditions of the employment for its employees, there is no longer a question that the housing commission is an employer, separate and distinct from Grand Rapids." (Emphasis added). *Id* at 407.

Contrary to the holding of the Court of Appeals in the instant case, in order for the Court in *Grand Rapids* to reach the specific labor issues before it, the Court had to resolve the fundamental core issues of whether a local housing commission could in fact sever the employment relationship of its employees from the city it served and, if so, what action was required to do so. Thus, the *Grand Rapids* decision is directly on point and, should have been followed by the Court of Appeals in the instant case as per MCR 7.215 (I)(1).

It follows that if a local ordinance granting the power to a local housing commission to set the terms of employment is required to grant that authority, absent such an ordinance, such power remains vested in the city's legislative body.

In the instant case, unlike in *Grand Rapids*, the Detroit City Council has not in fact passed an ordinance granting the power to the Housing Commission to set the terms and conditions of employment for its employees and, further, unlike in *Grand Rapids*, the Detroit City Council has passed both an ordinance and a specific resolution to the contrary. Given the fact that this results in the employees of the Housing Commission remaining as employees of the City of Detroit, unless and until there is Council action to the contrary, they must be treated like all other City employees.

Under the Charter, the Mayor and the Council are under a mandate to include all City

employees within the City of Detroit's civil service system, Charter §6-517 [10] (**396A**), and to present and pass a balanced budget which includes appropriations sufficient to fund the compensation of all City employees. Charter §8-204, 205; and MCLA §141.421 *et. seq.*, specifically, MCLA §141.435 and 437. Additionally, under the Charter, all City employees are only to be compensated pursuant to collective bargaining contracts and/or pay plans approved by the City Council by ordinance. Charter §§2-108 and 6-508.(**378A, 394A**). Given these state and Charter-mandated duties, as long as the employees of the Housing Commission remain City employees, i.e., until there is a City Council resolution to the contrary, the Mayor must present recommendations to the Council which establish the actual compensation or compensation ranges for inclusion in the budget relative to the compensation of the DHC employees. The Mayor, under both the City Ordinance and under the Housing Facilities Act, retains the discretion to determine either to recommend specific compensation figures or appropriate ranges and classifications, as well as the amounts to be paid. However, he must make a recommendation for consideration by the Council. Accordingly, the Council's actions in passing its ordinance, wherein it states the Mayor and the Council's obligations in directive, affirmative terms, does not run afoul of the state legislation.

The Court of Appeals concluded that the Housing Facilities Act did not empower the Council to force the Mayor to recommend anything, but rather, leaves the act of making recommendations entirely to the Mayor's discretion.(**39A**). The Court of Appeals failed to recognize that while the Housing Facilities Act does not empower the Council to force the Mayor to recommend anything, it also does not preclude the Council from imposing that duty, if in fact that duty is consistent with

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[10] There are certain limited exceptions contained within the Charter section, however, they are not relevant with respect to DHC employees.

the existing requirements of the Charter and City law. *Rental Property v Grand Rapids*, 455 Mich 426, 262 (1997), and sources the cited therein at page 261.

It also should be noted that the above-requested harmonious interpretation is consistent with common sense and traditional notions of separation of powers. Under the Charter as well as under state law, the City's executive branch of government is responsible for conducting the day-to-day business of the City. The executive branch of City government directs its officers and employees, its agencies and departments in such a manner to carry out the administrative governing of the City. The City's legislative branch is charged with the responsibility of overseeing those actions and in controlling those actions through its control of expenditures. See Detroit City Code §§4-112, Control of Property; 4-122, Approval of Contracts; 4-308, Power of Investigation, Article 8, Chapter 2, Budgets, (in it entirety). (**367A *et seq.***). If in fact the Court of Appeals' interpretation is accepted, to wit, that the Mayor has unbridled authority to decide whether to make recommendations regarding the pay for DHC employees who again, absent Council action are in fact employees of the City, in the absence of such a recommendation, a situation would exist, wherein DHC employees are compensated, although the funding of that compensation has not been properly appropriated, allocated or budgeted. This is clearly inconsistent with the fiscal requirements of the Charter as well as state law. See the Uniform Budget and Accounting Act, MCLA §§141.435 and 437.

The above interpretation is also consistent with a reading of the balance of the Housing Facilities Act. As previously noted, the Act specifically provides that in the absence of local enabling legislation, a housing commission may not enter into any type of contract, lease, or any other obligation involving real property absent council approval. The Housing Facilities Act clearly envisions a situation where, absent legislation to the contrary, creating a truly independent "corporate

body politic" entity[11], the council has the ability to maintain its control over the purse strings of the housing commission, i.e., without council approval a local housing commission may not enter into real property transactions, MCLA §125.661(1), borrow money or issue its own revenue bonds, MCLA §125.666 or seek and solicit grants, MCLA §125.659. It follows that the provision of the statute which is at issue here should also be read in a manner that is internally consistent with the above-provisions, thus affording the council the same opportunity, i.e., the opportunity to control the purse strings of the housing commission, relative to the payment of housing commission employees.

Clearly, the interpretation of both the state statute and the City Code provisions as passed by the City Council's ordinances as argued herein, do not run afoul of the plain meaning of either piece of legislation. Further, it allows the respective legislation to be construed in harmony. Finally, it is consistent with common sense and consistent with the prior opinion of this Court. If in fact, it was the intent of the legislature, to cause the DHC to become separated from the City of Detroit, as a self-standing entity with its own employees, as a matter of law, the legislature could have said so, rather

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[11] The assertion that mere use of the term "public body corporate" in §125.654(5), is a sorcerer's stone which magically transforms the DHC into a political body and/or entity separate and distinct from the City's other branches of government was rejected by the Court of Appeals in *Grand Rapid Employees Independent Union v City of Grand Rapids*, 235 Mich App 398 (1999), and by the Trial Court in its ruling in connection with the Interim Injunction. In order to determine the powers and authority of the entity, one must look at the actual powers and duties that the entity possesses as a result of its statutory enabling legislation. The Court of Appeals has quoted the following passage from *Beach v Leahy*, 11 Kan 23 (1873) with approval: "The mere fact that these organizations are declared in the statute to be bodies corporate, has little weight. We look behind the name to the thing named. Its character, its relations, and its functions determine its positions, and not the mere title under which it passes." *In Re* Advisory *Opinion Regarding Constitutionality of Public Act* 1966, No. 386 Mich 554 at 569(1968); *Huron - Clinton Metropolitan Authority v Boards of Supervisors*, 300 Mich 1 at 20-22 (1942).

than vesting significant discretion in the city's legislative body relative to the empowerment of a local housing commission and rather than specifically providing for any involvement of the City Council or the Mayor with respect to the pay scale and classification of DHC employees.

II. THE COURT OF APPEALS' OPINION THAT DETROIT CITY CODE §§14-5-3(5-7) ARE INVALID AND PREEMPTED BY THE HOUSING FACILITIES ACT IS ERRONEOUS GIVEN THE PLAIN MEANING OF THE LANGUAGE OF THE HOUSING FACILITIES ACT AND GIVEN THE ACTIONS OF THE DETROIT HOUSING COMMISSION, THE MAYOR AND THE DETROIT CITY COUNCIL PRIOR TO AND SUBSEQUENT TO THE AMENDING OF THE HOUSING FACILITIES ACT IN 1996, WHEREIN SAID PARTIES, THROUGH THEIR CONDUCT, HAVE EXPRESSLY AND IMPLICITLY AGREED, THAT EMPLOYEES OF THE DHC ARE TO REMAIN WITHIN THE CITY OF DETROIT'S EMPLOYMENT SYSTEM UNTIL MUTUAL AGREEMENT IS REACHED BETWEEN THE RESPECTIVE PARTIES TO SEVER THAT STATUS.

A. STANDARD OF REVIEW

This instant issue is one of statutory interpretation. This is an issue of law. Accordingly, the standard of review is *de novo*. *Putkamer V Transamerica Ins. Corp. Of America*, 454 Mich 626 (1997).

B. ANALYSIS

Whether or not the amendment of the Housing Facilities Act in 1996 severed the employment relationship between employees of the Housing Commission and the City of Detroit by operation of law, as Defendants have argued throughout this litigation and, as the Court of Appeals has held , it is clear that the Act does allow a municipality to **elect** to maintain control over local housing commission employees. MCLA §125.655(3) provides in pertinent part:

> "Upon the recommendation of the appointing authority [the mayor], the governing body of the incorporating unit **may** adopt a resolution

> either conditioning the establishment of any compensation of an officer or employee of the commission based upon the approval of the governing body, or establishing compensation ranges and classifications to be used by a commission in fixing the compensation of its officers and employees."

(Emphasis added).

In the instant case, this option has been exercised. On March 15, 1996, the City Council passed a resolution proposed by the Mayor enhancing the DHC's authority. In that resolution, the City Council approved a revised Memorandum of Agreement which specifically provided:

> "This MOA also requires the Detroit Housing Commission to seek additional approvals from City Council in order to take full advantage of state legislation providing greater authority for housing commissions."

The Mayor's submission of that resolution also expressly provided:

> "This resolution shall not be construed as changing or altering the status of City employees at DHD/DHC with respect to rights and benefits granted to such employees by civil service or collective bargaining agreements."

In the fall of 1996, subsequent to the passage of the amendment to the Housing Facilities Act, the Mayor and the DHC submitted a revised Memorandum of Agreement between the City of Detroit and HUD for approval by the City Council. In that revised agreement, signed by the Mayor and HUD on October 14, 1996, the parties reiterated:

> "This MOA also requires the Detroit Housing Commission to seek additional approvals from the City Council in order to take full advantage of state legislation providing greater authority for housing commissions."(**258A**).

It is important to note that, the transmittal letter from the Mayor's Memorandum of Agreement specifically states:

"Changes in the revised MOA must have City Council's approval."

Nowhere in the MOA is there any acceptance by the City Council of the concept of severing the employment status of DHC employees from the City of Detroit's employment system.

Of greater import, both prior and subsequent to the passage of the 1996 amendment to the Housing Facilities Act, the Housing Commission and the Mayor have routinely made recommendations to the City's governing body, to wit, the Detroit City Council, establishing compensation ranges and classifications to be used by the Housing Commission in fixing the compensation of its officers and employees. Pursuant to the Detroit City Charter, and the Uniform Budgeting and Accounting Act, the Mayor is under an obligation to submit a proposed budget to the City Council on a yearly basis. Detroit City Charter § 8-203; MCLA §141.434(1). The City's fiscal year runs from July 1 through June 30. The budget must be balanced and must include all expenditures anticipated to be expended by the City. As part of the budget adoption process, beginning many years before the amendment to the Housing Facilities Act, it has been the practice of the Mayor, as part of the budget adoption process, to submit the City's *White Book*. The *White Book* contains specific compensation ranges and classifications for all employees of the City of Detroit. (See Affidavit of Kathie Dones Carson,(**215A**). Both prior to and subsequent to the amendment to the Housing Facilities Act, the *White Book*, submitted by the Mayor, has contained compensation ranges and classifications for all employees of the DHC. Thus, it is clear that, even if the statute is read to provide that mayoral and city legislative involvement is permissive, the option to intervene has been exercised.

Undoubtedly, the state legislature's decision to afford cities the option of maintaining control over housing commission employees was made in light of the state's recognition of the concept of

Home Rule, codified within the State Constitution, to wit, Article 7 § 22 and within the Home Rule Act, MCLA § 117.1, *et. seq.*

Given the fact that the option has been exercised, and that there exists a current wage and salary classification scheme which has been approved by the City's legislative body, and given the fact that the respective parties, to wit, the Mayor, the DHC and the Detroit City Council have agreed that any modification as to the employment status of DHC employees will not occur absent City Council approval, it necessarily follows that that portion of the Housing Act, to wit, MCLA §125.655(3), which allows for the involvement of the Mayor and the City's legislative body has been triggered and that trigger can only be reset though the mutual agreement of the parties.

As noted, to date, the City Council has been unwilling to agree to change the current situation. Given this state of affairs, §14-5-3(5), which requires the Mayor to recommend compensation levels and classification levels to the City Council, and §14-5-3(6), which requires the City Council to adopt compensation ranges and classification levels to be used by the Commission in fixing the compensation of its officers and employees, are valid, and are consistent with the existing state of affairs under both state and local law. Additionally, given this state of affairs, to wit, that employees of the DHC are in fact still City of Detroit employees, §14-5-3(7), which requires that all DHC employees be members of the City's classified service or the un-classified service as provided under §6-517 of the Charter and which further provides that those employees are entitled to all rights of all employees of the City of Detroit, including but not limited to pensions and benefits, is in fact merely a recognition of their current status.

The Court of Appeals held that maintaining the status of DHC employees as employees of the City, subject to the civil service system as required by Detroit Code §14-5-3(7) was inconsistent with

the 1996 amendment to the Housing Act. Specifically that portion of §125.655(3) which states: "The commission shall prescribe the duties of its officers and employees".(**40A**). First, as this Court is undoubtedly aware, civil service generally takes its input from the division, department or agency involved and, although it is the HR department that prints and disseminates job descriptions, the job descriptions are created by the city department or agency or commission for which the employee works. Thus, a relationship with the classified service does not preclude the DHC from prescribing the duties of its officers and employees. Second, and of great significance, the above cited portion of §125.655(3) was not added by amendment in 1996. Rather, it has been in the statute since at least 1978. During the time between 1978 and the present date, the DHC has been able to "prescribe the duties of its officers and employees," despite their relationship to the City's classified service.

Obviously, in the event a mutual agreement is reached between the City Council and the Mayor to separate the employment status of the DHC employees from the City of Detroit's employment system, and to allow the DHC to set its own compensation ranges and classifications, an appropriate ordinance or resolution could be proposed by the Mayor and approved by the Council which would remove the mandatory requirements of Detroit City Code §§14-5-3(5)-(7).

The bottom line is that, given the current state of affairs, the City has exercised its rights under the state statute to set and establish the compensation ranges and classification of DHC employees and that situation must be allowed to continue, until changed through the normal process of City government, to wit, a resolution proposed by the Mayor accepted by the City Council. This was precisely what Judge Ziolkowski recognized and it is precisely what is contained within his Injunctive Order.

Accordingly, this Honorable Court should reverse and vacate the Opinion and Order of the

Court of Appeals and reinstate the Permanent Injunction issued by the Trial Court.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated herein, Intervening Plaintiffs/Appellants Detroit City Council, respectfully request that this Honorable Court grant Intervening Plaintiffs/Appellants the following relief:

A. Resolve this matter in favor of Intervening Plaintiffs/Appellants and, in so doing, reverse the decision of the Court of Appeals relative to the issues raised herein; and reinstate the Preliminary Injunction ordered by the Trial Court; and

C. Grant any other relief this Court deems just, equitable or appropriate.

Respectfully submitted,

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